

## DEPARTMENT OF THE INTERIOR

## 50 CFR Part 17

RIN 1018-AB38

**Endangered and Threatened Wildlife and Plants; Final Rule To List the Plant *Cryptantha crassipes* (Terlingua Creek Cat's-eye) as Endangered****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service (Service) determines the plant *Cryptantha crassipes* (Terlingua Creek cat's-eye), to be an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. This plant is known from six sites in Brewster County, Texas. The 6 populations consist of less than 3,800 plants. The plants are impacted by road construction, cattle trampling, and off-road vehicle (ORV) use. This action will implement Federal protection provided by the Act for Terlingua Creek cat's-eye. Critical habitat is not being designated.

**EFFECTIVE DATE:** October 30, 1991.

**ADDRESSES:** The complete file for this rule will be available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ecological Services Field Office, Corpus Christi State University, 6300 Ocean Drive, Corpus Christi, Texas 78412.

**FOR FURTHER INFORMATION CONTACT:** Philip Clayton, at the above address (512/888-3346 or FTS 529-3346).

**SUPPLEMENTARY INFORMATION:****Background**

*Cryptantha crassipes* is a narrow endemic that occurs in Brewster County, Texas. The species grows on xeric, gypsiferous, chalky shales on low, rounded hills and gently slopes in the Trans-Pecos shrub savannah. The climate is arid, with late summer rains. The plants grow in full sunlight and receive additional heat from the soil substrate (Poole 1987). The plants occur between 960 and 1,010 meters (3,150 and 3,320 feet), in elevation and are a component of an edaphic climax community (Poole 1987). Associated species include *Eriogonum havardii* (Havard buckwheat), *Euphorbia perennans* (perennial spurge), *acacia schottii* (Schott acacia), *Anulocaulis leiosolenus* (gypsum ringstem), *Ephedra* sp. (Mormon tea), *Larrea tridentata* (creosote), *Chrysactinia mexicana* (damianita), *Dalea formosa* (feather dalea), *Krameria glandulosa* (range ratany), and *Tiquilia hispidissima*.

*Cryptantha crassipes* is a perennial growing up to two feet tall, silvery overall, with a dense mound of leaves at the plant's base. The stems are slender, erect, hairy, and bristly. Leaves are narrow and whitish with hairs and bristles; at the plant's base, leaves are up to 8 centimeters (cm) (3 inches) long and to 0.64 cm (0.25 inch) wide. There are several stem leaves that become narrow at the apex. The flower cluster is terminal and 2.5 cm (1 inch) in diameter. The flowers are white, with yellow knobs rising above the laid-back white petals. The hairy fruit consists of four egg-shaped nutlets. Flowering occurs from late March to early June, and fruiting occurs from April to July (Poole 1987).

Six populations are presently known, all on private land in Brewster County, Texas. All populations appeared to be healthy and vigorous in 1987 (Poole 1987). The six known populations consist of less than one hundred to a few thousand plants scattered over sites of up to 175 acres in size. Among these populations, there is a total of about 3,754 individuals. All individuals observed have been mature. No seedlings or juveniles have been seen. Although the presence of immature fruits and/or flowers was documented in the 1987 status report, no seed dispersal was observed. The population biology of the species is unknown (Poole 1987).

*Cryptantha crassipes* was first discovered by V.L. Cory in the late 1930's in Brewster County, Texas. I.M. Johnston described the species in 1939. The species has been collected infrequently. No other historical occurrences are known (Poole 1987).

Federal government actions on this species began with Section 12 of the Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of Section 4(c)(2), now Section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. *Cryptantha crassipes* was included as "threatened" in the July 1, 1975, petition.

On December 15, 1980, the Service published a revised notice of review for native plants in the Federal Register (45 FR 82480); *C. crassipes* was included in that notice as a Category 2 species, which means that information indicates that proposing to list the species as

endangered or threatened is possibly appropriate, but conclusive data on biological vulnerability and threats are not currently available to support a proposed rule. The 1985 plant notice of review (50 FR 39526) maintained *C. crassipes* in Category 2. The 1990 plant notice of review (55 FR 6197) lists it in Category 1, which means the Service currently has substantial biological information to support a proposed rule to list as endangered or threatened. A proposed rule to list this species as endangered was published on April 13 1990 (55 FR 13919).

**Summary of Comments and Recommendations**

In the April 13, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Alpine Avalanche on May 17, 1990.

One comment was received from the Director of the Property Owners Association of a ranch where some of the identified populations of the species occurs, and is discussed below:

*Issue 1:* The commenter stated that road construction, cattle grazing, and ORV use are not occurring on the ranch at present. Response: The Service evaluates past, present, and future threats to the species when determining to list a species as endangered or threatened. According to the status report on *C. crassipes* (Poole 1987), road construction, cattle grazing, and ORV use have had negative impacts on this species in the past, and may constitute future threats. Although road construction, cattle grazing, and ORV use are not occurring on the ranch at present, they may be occurring at other locations where the species exists. The small population numbers, limited distribution, and lack of protection are additional threats to this species. Recent information (Poole, Texas Parks and Wildlife Department, pers. comm., 1990) indicates that *C. crassipes* also occurs on private tracts of land adjacent to the ranch. Apparently these tracts are unfenced and some grazing is occurring.

*Issue 2:* The commenter suggested that many areas on the ranch appear to be suitable for *C. crassipes*. He suggested that the Service conduct additional surveys for the plant on the ranch and on Big Bend National Park (Park). Response: Because this species is only

their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. There are no known populations of *C. crassipes* that either occur on Federal land and/or would be affected by activities authorized, funded, or carried out by a Federal agency.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under

Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any state law or regulation, including state criminal trespass law. Certain exceptions apply to agents of the Service and state conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22201 (703/358-2104).

#### National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### References Cited

Poole, J.M. 1987. Status report on *Cryptantha crassipes*. U.S. Fish and Wildlife Service. Albuquerque, NM. 20 pp. + maps.

#### Author

The primary author of this final rule is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

#### Regulation Promulgation

#### PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Boraginaceae, to the List of Endangered and Threatened Plants:

#### § 17.12 Endangered and threatened plants.

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(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Boraginaceae—Borage family:						
<i>Cryptantha</i> .....	Terlingua Creek .....	U.S.A. (TX)	E	439	NA	NA
<i>crassipes</i> .....	cat's-eye .....					

Dated: September 20, 1991.

**Bruce Blanchard,**

Acting Director, Fish and Wildlife Service.

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